

Message Text

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ACTION EA-06

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FM AMCONSUL HONG KONG

TO SECSTATE WASHDC 3742

INFO AMEMBASSY LONDON

USLO PEKING

AMEMBASSY TAIPEI

S E C R E T SECTION 1 OF 2 HONG KONG 1365

NOFORN

LIMDIS

E.O. 11652: XGDS-2

TAGS: SREF CH HK US

SUBJ: ILLEGAL IMMIGRANTS AND APPEALS FOR U.S. POLITICAL
ASYLUM

REF: A. STATE 009266; B. HONG KONG 0406

SUMMARY. ON JANUARY 29 WE DISCUSSED PROBLEMS POSED BY ILLEGAL IMMIGRANTS WHO MIGHT ASK CONSULATE GENERAL FOR ASYLUM (REF B) WITH HONG KONG GOVERNMENT (HKG) POLAD ALAN DONALD MEETING RESULTED IN ESTABLISHING A METHOD OF AVOIDING THESE PROBLEMS. DONALD ACKNOWLEDGED THE POTENTIAL FOR EMBARRASSMENT FOR BOTH HKG AND CONGEN AND NOTED EXTREME IMPORTANCE OF AVOIDING PUBLIC ATTENTION THIS SUBJECT. END SUMMARY.

1. DONALD REVIEWED THE CURRENT SITUATION ON ILLEGALS AND SAID THAT HKG WAS RIGIDLY IMPLEMENTING FORCIBLE REPATRIATION OF THOSE CAUGHT ATTEMPTING ENTRY. SINCE POLICY WAS IMPLEMENTED ON 1 DECEMBER 1974, 314 ILLEGALS HAD BEEN RETURNED TO PRC. OF

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ONLY TEN PERMITTED TO STAY, SIX WERE ORIGINALLY HONG KONG

RESIDENTS AND TWO WERE GIVEN EXEMPTION ON HEALTH GROUNDS. RECENTLY, GROUNDS FOR EXEMPTION HAD BEEN NARROWED FURTHER AND EVEN PARENTAL TIES WERE NOW NO LONGER ACCEPTABLE BASIS FOR EXEMPTION. HONG KONG COURTS ON JANUARY 29 UPHELD AUTHORITY OF HONG KONG IMMIGRATION DEPARTMENT BY DENYING HABEAS CORPUS WRIT PETITION OF HONG KONG MOTHER ON BEHALF OF "FREEDOM SWIMMER" DAUGHTER. (LEGAL THEORY IS THAT IMMIGRATION DEPARTMENT IS NOT "REPATRIATING" BUT MERELY DENYING "PERMISSION TO LAND" , THUS ILLEGAL WAS REGARDED BY COURT AS NOT HAVING ACUTALLY ENTERED HONG KONG).

2. DONALD ADDETERED THAT IN ORDER TO MAKE POLICY VIABLE AND TO DEMONSTRATE HKG SERIOUSNESS TO PRC, STRICT APPLICATION WAS REQUIRED. THIS MEAND THATHKG COULD NOT AND WOULD NOT DISCLOSE IN ANY PUBLIC WAY WHAT CONTITUTED GROUNDS FOR EXEMPTION FROM REPATRIATION LEAST WELL ORGANIZAED REFUGEES FABRICATE CLAIMS ACCORDINGLY. HOWEVER, HKG WAS ADHERING TO PRINCIPLE THAT EACH CASE WOULD BE JUDGED ON ITS OWN MERITS AND DONALD THOUGHT THAT IN PRACTICE THERE WERE PROBABLY SOME ILLEGALS WHO HAD GOT THROUGH BOTH PRC AND HKG BORDER PATROLS ALL THE WAY INTO POPULATED HONG KONG AREAS. THESE WOULD UNDOUBTEDLY LIE LOW WITH HELP OF FRIENDS OR RELATIVES AND MIGHT MAINTAIN THIS STATUS FOR MONTHS OR EVEN YEARS BEFORE SURFACING. DONALD FELT THAT IN LIGHT OF THESE REFUGEE PRACTICES, AND TWO STOWAWAY CASES NOTWITHSTANDING, IT WOULD BE HIGHLY UNLIKELY THAT SUCH PERSON WOULD APPROACH A THIRD COUNTRY ESTABLISHMENT I.E U.S. CONSULATE GENERAL FOR ASYLUM. HE ADDED THAT IN ANY CASE PRC REPRESENTATIVES HAD TOLD HIM DIRECTLY THAT ILLEGALS REPATRIATED TO CHINA WERE NOT SENT TO LABOR CAMPS NOR EVEN PHYSICALLY ABUSED BUT WERE ONLY SENT BACK TO COMMUNES FOR "REEDUCATION".

3. WE STRESSED THAT ALTHOUGH CONTINGENCY WAS POSSIBLY REMOTE, IN VIEW OF STOWAWAYS PRECEDENT AND UNCERTAINTIES THAT CONGRONT ILLEGALS THERE WAS NEED TO DEVISE ARRANGMENTS WHICH WOULD LESSEN RISK OF MBASRRASSING INCIDENT. WE IN HONG KONG MIGHT AGREE THAT PRC TREATMENT OF REPATRIATED ILLEGALS WAS LENIENT BUT THIS VIEW WOULD NO BE ACCEPTABLE IN U.S., PARTICULARLY IF WIDE PUBLICITY WERE INVOLVED. WE NOTED THAT KEY FACTOR FOR USG IN HANDLING ASYLUM REQUESTS WAS "WELL FOUNDED FEAR OF PERSECUTION" WHICH WOULD AUTOMATICALLY BE ASSUMED TO EXIST FOR ANYONE

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PUBLICLY ASKING FOR POLITICAL ASYLUM AT THE CONGEN. THEREFORE, WE WOULD HAVE BE ASSURED THAT AN ILLEGAL ASKING CNGEN FOR ASYLUM WOULD NO BE IN JEOPARDY IF WE BROUGHT HIM TO THE ATTENTION OF HKG.

4. DONALD REPLIED BY EMPHASIZING THAT HKG'S POLICY OF HANDLING EACH CASE INDIVIDUALLY ALLOWED IT TO HAVE ENOUGH FLEXIBILTiy

SO THAT IT WOULD BE POSSIBLE, ALTHOUGH OF COURSE HE COULD GIVE NO COMMITMENT IN ADVANCE, THAT ANY PERSON CONGEN INFORMED THEM ABOUT WOULD BE ALLOWED TO STAY. HE POINTED OUT THAT ANYONE WHO HAD PHYSICALLY MADE IT INTO HONG KONG AS FAR AS CONSULATE GENERAL WOULD NOT ACTUALLY BE IN DANGER OF REPATRIATION UNDER PRESENT GROUND RULES AND THAT WE COULD CONTINUE PRIVATELY ADVISING QUESTIONER, AS WE HAD DONE BEFORE DECEMBER 1, THAT SUCH WAS THE CASE AND HE SHOULD APPLY FOR INS CONDITIONAL ENTRY PROGRAM.

5. HOWEVER, DONALD DID AGREE THAT IF A NEWLY ARRIVED ILLEGAL WAS INTENT UPON FORMALLY REQUESTING ASYLUM FROM CONGEN HE WOULD BE IN DIFFERENT CATEGORY AND SHOULD BE TREATED DIFFERENTLY. SUCH A PERSON WOULD LIKELY BE CONCERNED ABOUT FORCIBLE REPATRIATION AND BE ACCOMPANIED BY RELATIVES OR FRIENDS NOT ADVERSE TO PUBLICITY. WE DECIDED THAT UNDER THOSE CIRCUMSTANCES POLAD WOULD BE PROMPTLY NOTIFIED BY CONGEN AS SOON AS REQUEST FOR ASYLUM WAS MADE. PLAD IN TURN WOULD DECIDE HOW TO HANDLE CASE IN CONSULTATION WITH US AND PROBABLY, DEPENDING UPON CIRCUMSTANCES, ARRANGE FOR HKG IMMIGRATION OFFICIALS TO PROCESS HIS CASE IN SUCH A WAY THAT HE WOULD BE PERMITTED TO SAY. IT WOULD BE UP TO HKG TO INFORM SUBJECT OF CONDITIONS FOR STAYING AND ADVISE APPROPRIATE RATIONALE TO AVOID BOTH SETTING PRECEDENTS AND CREATING PUBLICITY. DONALD STATED THAT THIS ARRANGEMENT PROVIDED REASONABLE ASSURANCES THAT ILLEGAL REQUESTING ASYLUM WOULD RECEIVE SPECIAL CONSIDERATION BY HKG. HE STIPULATED THAT THIS ARRANGEMENT MUST BE CLOSELY HANDLED AND WAS PARTICULARLY CONCERNED THAT NO HINT OF IT REACH PRC EARS.

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S E C R E T SECTION 2 OF 2 HONG KONG 1365

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6. WE ALSO RAISED WITH DONALD MATTER OF SOME 6,000 PERSONS IN CHINA WHO ARE SUBJECT OF APPROVED INS IMMIGRATION PETITIONS FILED IN THEIR BEHALF BY RELATIVES IN THE U.S. WE ASKED THAT IF ANY OF THESE WERE APPREHENDED AS ILLEGALS THEY COULD ALSO BE GIVEN SPECIAL CONSIDERATION IN ORDER THAT WE COULD PROCEED WITH PROCESSING IN HONG KONG FOR IMMIGRATION TO THE UNITED STATES. WE NOTED THAT SUCH PERSONS WOULD NOT BE A BURDEN ON HONG KONG SINCE THEY WOULD IN EFFECT BE PASSING THROUGH AND THERE WERE REFUGEE RELIEF AND OTHER ORGANIZATIONS DESIGNED TO TAKE CARE OF THEM. DONALD AGREED TO PROVIDE BORDER PATROLS AND HONG KONG IMMIGRATION AUTHORITIES RESPONSIBLE FOR INITIAL SCREENING WITH SOME QUESTIONS WHICH COULD ESTABLISH WHETHER A PERSON HAD CLAIM TO SOME RELATIVE OR PETITION CONNECTION IN THE U.S. CASE WOULD THEN BE DEFERRED PENDING CONFIRMATION OF THE CLAIM BY CONGEN. AGAIN WITHOUT MAKING COMMITMENT, DONALD IMPLIED THAT CONFIDENTIAL CASES WOULD BE ALLOWED TO REMAIN IN HONG KONG.

7. COMMENT. IN VIEW OF STRICTNESS OF HKG POLICY, WE THINK THESE CONTINGENCY ARRANGEMENTS ABOUT THE BEST THAT CAN BE
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EVISED UNDER PRESENT CIRCUMSTANCES. DONALD OBVIOUSLY COULD NOT GIVE ANY GUARANTEE THAT ILLEGALS SEEKING ASYLUM AT CONGEN OR WITH PETITIONING RELATIVES IN THE STATES WOULD IN EVERY CASE BE ALLOWED TO REMAIN IN THE COLONY. PROBABLY A FACTOR INHIBITING HIM IN GIVING COMMITMENT IS FEAR OF A LEAK WHICH WOULD ADVERSELY AFFECT PRC COOPERATION IN REDUCING IMMIGRATION INFUX INTO HONG KONG. HOWEVER, TENOR OF DONALD'S REMARKS AND CONGEN LONG-STANDING EFFICIENT AND COOPERATIVE RELATIONSHIP WITH HKG WOULD INDICATE THAT, WHILE IT WOULD BE NEARLY IMPOSSIBLE TO COVER EVERY EVENTUALITY, ARRANGEMENTS WE HAVE WORKED OUT SHOULD ENABLE US TO AVERT PROBLEMS DESCRIBED IN REF B.

8. IN OUR DISCUSSION IT WAS AGREED THAT DEFECTOR PROGRAM ARRANGEMENTS, AS DISTINCT FROM ASYLUM PROCESSING, WERE WELL ESTABLISHED AND NEEDED NO CHANGES.
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